



# CLOUD SERVICES DISTRIBUTION AGREEMENT

Effective as of 15/04/2024

MC3 Cloud Ltd, a private company limited by shares, registered in Mauritius under the business registration number C20177056 and whose registered office is c/o Legis Corporate Secretarial Services Ltd, 1st Floor, Block B EDITH, 6 Edith Cavell Street, Port-Louis, is a Cloud Services and Solution Aggregator (formerly Indirect CSP Provider) that has developed a procurement and marketing platform offering the management tools necessary for resellers to select and redistribute the services provided by various Cloud Service Providers, to their End Customers (collectively "MC3 Cloud Platform").

The management tools offered by the MC3 Cloud Platform are for ordering, supplying and invoicing the Services.

The MC3 Cloud Platform is managed as a stand-alone cloud service and requires no installation.

Any company wishing to subscribe to MC3 Cloud Services (the "Reseller"), must fully adhere to the terms of this Agreement, including without limitation the terms under which the Reseller may place orders and resell Cloud services via the MC3 Cloud Platform to its End Customers.

After having read this Agreement, the Reseller has ascertained the adequacy of the proposed services with regard to its needs and wishes to use the services of MC3.

By checking the corresponding box on the MC3 Cloud "Customer Onboarding form", the Reseller agrees to the terms of this Agreement which cannot be waived unless expressly agreed between MC3 and the Reseller.

The terms of this agreement may change. Each order implies the knowledge and acceptance of the terms by the reseller.

MC3 and the Reseller are collectively referred to in this Agreement as the "Parties" or individually as the "Party".

Each of the Parties declares:

- To have provided the other with all the information necessary and decisive for its consent, and;
- That it has all the information for this purpose, including that which it considers to be due from the other Party.

The Parties have therefore agreed as follows.

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## 1. Definitions

In the Agreement, the following terms have the meaning ascribed to them below:

- **“Service Subscription”** means the personal, non-exclusive, non-assignable and non-transferable right of End Customers to use a Service for a specified period of time and under the Customer Contract between the End Customer and the Cloud Services Provider.
- **“Administration”** has the meaning ascribed to it in Article 6.5.1.
- **“Anomaly”** means a reproducible malfunction or unavailability of the Service, not attributable to a maintenance exclusion Event. Anomalies are reported by the End Customer to the reseller and are dealt with in accordance with the procedure set out herein.
- **“End Customer”** means the Reseller’s customer, the final beneficiary of the Service, who acquires it as part of a Service Subscription in accordance with the specific provisions of the Customer Contract.
- **“Academic Customer”** has the meaning ascribed to it in Article 6.5.1.
- **“Government Customer”** has the meaning ascribed to in Article 6.5.1.
- **“Agreement”, “herein”, “hereof”, “hereunder”, “hereby”, “below”** and similar expressions mean the Agreement and its customer onboarding form as these contractual documents may be amended in accordance with the provisions hereof.
- **“Customer Contract”** means the contract between a Cloud Services Provider and an End User regarding its Service Subscriptions, and which the Reseller is responsible for having End Users sign. The Reseller expressly agrees that the Customer Agreements are the standard terms and conditions for the distribution and use of the Service by End Customers. In any event, this Customer Contract may be revised by the Cloud Services Provider for existing contracts as well as for future customers, but in no case may the Reseller itself revise the Customer Contract.
- **“Effective Date”** means the date of acceptance of this Agreement by checking the relevant box on the MC3 Cloud “Customer onboarding form”. Data means the data and files of the End User, hosted as part of the Service. The Data uploaded by the End Customer and its own customers is strictly related to its business activity and must comply with the terms of the Customer Agreements. It includes the data of the End Customers listed on the Service under the responsibility of the End Customers. MC3 and the Reseller disclaim all responsibility for the Data.
- **“Personal Data”** any information relating to an identified or identifiable natural person; an “identifiable person” is an individual who can be identified, directly or indirectly, in particular by reference to an identifier, such as a name, identification number, location data, online identifier, or one or more elements specific to their physical, physiological, genetic, psychic, economic, cultural or social identity, within the meaning of the Personal Data Protection Laws.
- **“Intellectual Property Rights”** means all intellectual property rights, including, but not limited to, copyright, software rights, computer program rights, database rights, patent rights, invention rights, trademark rights, design rights, semiconductor topography rights, trade secrets and know-how, design and patent rights, whether registered or not, any right to apply for a grant or registration, and any rights in inventions, discoveries, trade secrets, processes, algorithms, tools, libraries or formulae or protection that may be afforded to trade dress (including three-dimensional marks) and trade secrets or that may confer a right in formulae, algorithms, concepts, inventions or know-how generally, or the expression or use of such formulae,

algorithms, concepts, inventions or know-how; and all filings, registrations, contracts and all applications, licences, sublicences attached to or related to any of the above rights.

- **“Cloud Service Provider”** or “Vendor” means the local, international or global company that allows reseller to connect to its Services via an Internet connection and that authorize MC3 to distribute its Services.
- **“Confidential Information”** means confidential, secret or proprietary information of MC3 and/or the Cloud Services Providers, including without limitation Intellectual Property Rights, know-how of MC3 or and/or the Cloud Services Providers, or any documents, materials provided to the Reseller under this Agreement, all terms and conditions, information, specifications, documents and other materials of any kind (whether tangible or intangible, machine readable or user readable); the ideas, techniques, know-how and procedures contained or disclosed in any of the foregoing materials; any part of the foregoing disclosed to the Reseller on a confidential basis for use only as expressly permitted by this Agreement. Such information will be considered as Confidential Information, whether or not such information (in material form) is identified as “CONFIDENTIAL” (or with a similar legend).
- **“Initialization”**: means the service prior to the opening of the Service for an End Customer, which may include (1) the Setup of the Service by the Reseller, (2) the loading of the Data by the Reseller or the End Customer, and (3) the interconnection with the End Customer’s Site, performed by the Reseller. The content and indicative duration of the Initialization are stipulated in the Order. Initialization precedes the opening of access to the Service for End Customers.
- **“Business Day”** means any day except Saturdays and Sundays and legal holidays in respect to the operating hours.
- **“Scaled-up Support Measures”** has the meaning ascribed to it in Article 6.17 of the Agreement.
- **“Anti-corruption Laws”** has the meaning ascribed to in in Article 12 of the Agreement.
- **“Personal Data Protection Laws”** means all European and French laws, standards, directives, policies, regulations and procedures, as amended, relating to the security, confidentiality or protection of personal data, including, without limitation, Law No. 78-17 of 6 January 1978, Law No. 2018-670 of 30 July 2018, Decree No. 2018-687, the General Data Protection Regulation (EU) 2016/679 and the European Parliament’s Data Protection and Privacy Directive 2002/5/8EC, the Data Protection and Electronic Communications Regulations 2003 (EC Directive), the 2003 Regulations (21 2003/2426) and any legislation and/or regulations implementing them, as amended from time to time, as well as any guidelines, codes or practices and policies issued by the French Data Protection Authority (CNIL).
- **“Maintenance”** means the service of correcting any software Anomalies in the Service in the event of an Anomaly, by MC3 or the Reseller according to the nature of said Anomalies and the distribution of the interventions stipulated in this Agreement.
- **“Trademarks”** means all logos, trademarks, service marks, brand names, trade names, domain names and/or slogans used by MC3 and/or the Cloud Service Providers in connection with the Services provided under this Agreement (whether registered or not).
- **“New Reseller”** means a Reseller who has not been invoiced within the last 24 months.
- **“Settings”** means any settings and configurations of the Service, specified, and carried out as part of the Initialization to meet the needs of the End Customer, without modification of the source codes or screens of the Service. The Reseller performs the settings within the limits of the possibilities indicated by the Service Provider.

- **"MC3 Cloud Platform"** has the meaning ascribed to it in the preamble to this Agreement. By checking the acceptance box, the Reseller agrees to the terms of this Agreement. The MC3 Cloud Platform will provide the Reseller with updates and other information relating to this Agreement.
- **"Services"** means the Cloud Services Provider's remote services or solutions offered from the MC3 Cloud Platform for resale by the Reseller, the functional scope and characteristics of which are defined in the Order. The End Customer accesses the Service via APIs, portal software libraries or synchronization plugins developed by the Cloud Service Provider.
- **"SLA"** means the service level commitments that a Cloud Service Provider makes to End Customers regarding the delivery and/or performance of the relevant Service Subscription.
- **"Support"** means the assistance in the use of the Service by the Customer, provided by MC3 and/or the Reseller.
- **"Territory"** means the country or list of countries listed in the customer onboarding form in which MC3 will authorize the Reseller to resell Service Subscriptions through the MC3 Cloud Platform, or by any other means that MC3 authorizes and provides to Reseller.

## 2. Interpretation of the Agreement

In the Agreement:

- The preamble forms an integral part of the Agreement.
- A reference to the singular includes the plural and vice versa, and a reference to a person includes a legal person.
- The term "including" means "including without limitation" and shall not limit the generality of the foregoing words or be construed as limited to the same class as the foregoing words if a broader interpretation is possible.
- Headings and underlining are included for identification purposes only and do not form part of the Agreement.
- For the calculation of the period in which or following which an act is to be done or a measure taken, the date which is the reference day for the calculation of that period shall be excluded. If the last day of this period is not a Business Day for a Party, the period will end on the next Business Day.
- A reference to any legislation is a reference to that legislation as amended or reissued from time to time and includes all regulations and legislative instruments issued thereunder.
- Reference to a Party includes its personal representatives, successors in title and authorized assigns.
- All amounts are expressed in the currency of the Reseller as indicated on the MC3 invoice unless otherwise stated.
- The Agreement and the documents entitled "Customer Onboarding form" constitute the entirety of the commitments existing between the Parties. It supersedes any prior oral or written agreement relating to the subject of the Agreement.
- The Agreement consists of the following contractual documents.

### 3. Term, termination and end of the Agreement

#### 3.1. Agreement

The Reseller accepts the terms and conditions that apply at the time of placing an Order on the Marketplace. MC3 may amend or replace these terms and conditions at any time.

Each Subscription will commence on the date of the order and will continue for the relevant subscription period. At the end of this first firm period, the Agreement will continue by tacit renewal unless one Party objects by sending the other Party a written notification before the end of the subscription period according to the notice practiced by the vendor. The notice period begins when the other party receives the notification.

If the Parties have agreed on a minimum subscription period, this Agreement remains in until the expiry of the agreed subscription.

#### 3.2. Consequences of the end of the Agreement

On the date this Agreement is terminated, the obligations and rights of the Parties will expire upon the effective date of termination unless the Parties agree otherwise or in the case of an obligation or right which by its nature will survive termination. The parties may indicate in writing their intention not to extend the contract by respecting the notice given by the vendor, before the end of the commitment period.

#### 3.3. Suspension of the Service

The Vendor and/or MC3 may decide to suspend an End Customer's access to a Service at any time in order to prevent damage, liability, sanctions or for any equivalent valid reason in the event of manifestly unlawful behavior on the part of the End Customer concerned or in the event of the latter's failure to comply with the provisions of the Agreement, and in particular, without this list being exhaustive, if an End Customer or a user related to the End Customer uses the Services for or in connection with:

- the dissemination or contribution to the dissemination of viruses, spyware, other harmful programming code or emails not solicited by the recipient (spam, phishing, chain letters, etc.);
- actions disrupting or damaging computers or systems on the internet or actions involving unauthorized access to computers or systems connected to the internet (hacking);
- acts or omissions that cause MC3 or the Vendor abnormal interference with or damage to its systems or create abnormally high or uncontrollable resource consumption (such as strain on the processor, RAM, hard drive or network);
- infringement of a third party's right (including copyright) by transferring, uploading, distributing or the like without the appropriate authorization of the rights holders;
- activities or dissemination of material contrary to the local penal code (for example: dissemination of slander or libel, display of child pornography, receiving stolen property or gambling); or
- any other action that violates applicable law, the terms of use of the MC3 Cloud Platform, or the user guidelines regarding the use of the Service as indicated in the MC3 Cloud Platform.



- the End User infringes the Intellectual Property Rights of MC3, the Vendor or any third-party provider of the Vendor.

The Vendor and/or MC3 may suspend the Reseller's access to the Services at any time if the actions described in Article 6.10 - "Acceptance of the Customer Contract" are not carried out by the Reseller in person or with their knowledge.

MC3 will inform the Reseller of any suspension and the reason for it.

### 3.4. Termination for fault

This Agreement may be terminated at any time in the event of a significant breach by a Party of its contractual obligations, namely (i) a breach by MC3 of its commitments to perform its services in accordance with the quality levels and compliance standards that may be stipulated in the Agreement and, more generally, in the event of failure to deliver the Service in accordance with the terms of the Agreement, (ii) a significant breach by the Reseller of its duty to cooperate and/or pay, (iii) a breach by the Reseller of its obligations regarding security, protection of personal data or intellectual property rights.

In this case, the injured Party may give formal notice to the defaulting Party to remedy its breach or non-performance within ten (10) days of receipt by the defaulting Party of a registered letter with acknowledgement of receipt sent by the Party owing the obligation, which letter shall expressly refer to this clause and specify that if the defaulting Party fails to fulfil its obligation within the aforementioned period, the other Party shall be entitled to terminate the Agreement. After this period, the Agreement will be immediately and automatically terminated to the detriment of the defaulting Party, without prejudice to any damages that may be claimed by the injured party.

In particular, just cause exists if the Reseller defaults on two successive instalments: defaults on the payment of invoices or a significant part of one of them.

### 3.5. Liquidation

Subject to applicable law, and without limiting any other right or remedy, either Party will be entitled to terminate this Agreement with immediate effect without filing a claim with the competent Court, if the other Party (except in respect of a reorganization, reconstruction or merger not affecting the solvency of the other Party) commences any form of winding-up proceedings, appoints a liquidator, is generally unable to pay its debts, enters into a composition or similar arrangement with its creditors.

### 3.6. Consequences of termination

Upon termination of the Agreement, the Reseller agrees to cease all promotion and distribution of the Service. It loses the right to purchase any Service Subscriptions from MC3 and must not resell or attempt to resell any Service Subscriptions to any End Users.

If the agreement between MC3 and the Reseller is terminated, the Reseller remains obligated to pay all amounts due and for the unexpired period of all subscriptions ordered by the reseller notwithstanding the termination of the agreement between MC3 and the Reseller.



The reseller is committed to their End Customer. It is up to the reseller to conclude an agreement with their End Customer so as not to bear the risk of non-payment.

## 4. Purpose of the Agreement

Purpose: The Parties shall set up a commercial distribution relationship between them. The purpose of this Agreement is to define the terms and conditions under which MC3 authorizes the Reseller to use the MC3 Cloud Platform for the purpose of promoting and distributing the Services to End Customers in the Territory through Service Subscriptions as well as the terms and conditions of the Initialization, Support and Maintenance of the Services.

## 5. Distribution model of the Services via the MC3 Cloud Platform

### 5.1. MC3 Cloud Platform

Access to the MC3 Cloud Platform is limited. New Resellers must first be registered as new customers and agree to the MC3 terms and conditions before access can be granted.

The reseller is committed to establish a strong level of authentication to access MC3 Cloud.

The Reseller is responsible for keeping records of active users and maintain who has access.

### 5.2. Distribution Model

MC3 has a contractual relationship with the Vendor, and the Reseller is the co-contractor of the End Customer. The Reseller shall not act as an agent, representative or broker of a Vendor or MC3 but shall act on its own behalf. The agreements between the Reseller and the End Customers are in no way enforceable against MC3.

The End Customer pays the Reseller who in turn pays MC3.

Some Vendors or Vendor licensors may require the End Customer to sign specific terms of use or license conditions applicable to the use of the relevant Service. This does not change the overall distribution model and payment flow.

## 6. Conditions of sale

### 6.1. Ordering and delivery of Service Subscriptions

**6.1.1.** The Reseller shall electronically submit an Order through the MC3 Cloud Platform for all Service Subscriptions ordered by each of Reseller's End Customers. Upon receipt of each Order, MC3 will provide the Service Subscriptions on the basis of the information provided by the Reseller to the relevant End Customer provided that where the Vendor, under the relevant Customer Contract, permits cancellation of all or part of an Order and the



Reseller cancels all or part of an Order in accordance with that cancellation policy, MC3 will cancel the supply of the relevant Service Subscriptions.

**6.1.2.** The Reseller may only submit Orders for Service Subscriptions through the MC3 Cloud Platform. The Reseller must fill in all the required fields on the MC3 Cloud Platform in order for the Service Subscriptions taken out on behalf of the End Customer to be effective. The Reseller will provide MC3 with the correct contact details, as at the date of subscription, of the administrator of each Service Subscription as requested by the relevant Cloud Services Provider.

**6.1.3.** The Reseller will provide End Customers with the administrative identification information previously provided by MC3 to access the relevant Service Subscriptions. In no event shall the Cloud Services Provider and/or MC3 be liable to either the Reseller or the End Customer for the failure of the Reseller to provide the End Customer with login details.

## 6.2. Sales preparation and training

The Reseller shall ensure, throughout the duration of the Agreement, that (i) its employees, associates and/or agents are familiar with and master the functionalities of the MC3 Cloud Platform and (ii) that they regularly consult the MC3 Cloud Platform Storefront, in particular to consult communications and notices, updates and modifications to this Agreement, price lists and schedules, policies, processes and, more generally, all information useful for the optimal marketing of the Service.

The Reseller will also ensure that its personnel regularly receive appropriate and useful training and instructions for the optimal distribution of the Services, and for the provision of support services - including technical support - to the End Customer concerning the Services. Thus, the Reseller undertakes to participate in all training and information sessions offered by MC3. The Reseller undertakes to make all commercial and technical personnel available for such training during normal working hours and will make every effort to monitor and control the completion and retention of such training. The Reseller will make every effort, in the event of a change of employees and/or turnover of personnel, to ensure that the level of preparation, knowledge and mastery of the MC3 Cloud Platform and Services is maintained.

MC3 may refuse to grant the distribution right to the Reseller if it considers that it does not meet the conditions set out above in terms of training.

## 6.3. The MC3 Cloud Platform

The Reseller is solely responsible for the use made by its employees, associates and/or agents of the MC3 Platform and will ensure that only duly authorized employees will access their accounts. MC3 may also provide the Reseller with tools to self-manage the access rights of its employees to the MC3 Cloud Platform. The use of these tools will be under the sole responsibility of the Reseller so that no liability of any kind whatsoever may be incurred by MC3 in connection with the use of said tools. In the event that the Reseller does not have access to the self-administration tools, or if the Reseller requires assistance, the Reseller will contact MC3 if an employee's account on the MC3 Cloud Platform is closed. MC3 will endeavor to respond to these requests without however being held liable, the Reseller remaining solely responsible for the measures taken in the context of the management of the access rights of its personnel.

## 6.4. Service Subscriptions

**6.4.1.** New versions of Subscriptions to existing Services. Reseller acknowledges and agrees that Vendor may modify a Service Subscription or deliver a new version of a Service Subscription at any time and for any reason, including, without limitation, (i) to meet customer needs or competitive requirements, (ii) to meet administrative regulation, order, or law, or (iii) to promote innovation in its Service Subscription offering. The Vendor reserves the right to add new features or functionality to a Service Subscription or to remove existing features or functionality from a Service Subscription. MC3 shall in no event be liable to the Reseller and/or the End Customer for any damage whatsoever resulting from changes to Subscriptions to the CSP Services.

**6.4.2.** Service Subscription Management the Reseller will perform certain functions associated with the purchase, activation, support, and management of End User Service Subscriptions. These functions may be performed through the MC3 Cloud Platform or other processes, or tools identified in this Agreement. The Reseller acknowledges and agrees that MC3 may update the processes and tools necessary to perform these functions, as MC3 deems appropriate, at its sole discretion, and the Reseller may be required to implement such updates or changes to continue to perform these functions.

## 6.5. The Governmental, academic subscriptions and Non-Profit organizations

MC3 may provide, through the Reseller, Service Subscriptions to customers who are identified as academic or administrative. The Reseller may only provide such Service Subscriptions to End Customers who actually meet the qualification criteria of the relevant Cloud Service Provider.

**6.5.1.** Offers for governments. The Service Subscriptions identified in the MC3 Cloud Platform as "Governments" are reserved solely for End Customers belonging to the government and are subscribed in the context of and for the needs of their activity. The Reseller is required to (i) validate the eligibility of the " governments" Customer prior to any resale of such Service Subscription to such Customer and (ii) meet the corresponding requirements of the Cloud Services Provider for the resale of governments Customer Service Subscriptions. "Governments customer" means, for the purposes of the Agreement, any entity that meets the governments eligibility criteria set out in the relevant Cloud Service Provider Customer Contract. The Reseller must retain the documentation that validated the status of a governments Customer in the event of an audit. Validation of the governments Customer status must be done in the form of a valid purchase order from the government. The Reseller will use reasonable efforts to promote the governments Service Subscriptions only to governments Customers. If the Reseller markets governments Service Subscriptions, it must only do so with advertising or marketing material clearly indicating that the governments Service Subscription is only available for purchase by governments customers. The Reseller will disclose all rebates, fees and other concessions to a governments Customer in accordance with the law, regulations or the terms of administrative requests.

**6.5.2.** Academic offers: Service Subscriptions identified in the MC3 Cloud Platform as "academic" are reserved for Customers in the school and/or university sector only and are subscribed to in the context of and for the needs of their activity. The Reseller is required to (i) validate the eligibility of the Academic Customer prior to any resale of such Service Subscription to such End Customer and (ii) meet the corresponding requirements of the Cloud Services Provider for the resale of Academic Customer Service Subscriptions. "Academic Customer" means, for the purposes of the Agreement, any entity that meets the eligibility criteria for schools and/or universities set out in the relevant Cloud Service Provider Customer Contract.

## 6.6. Reseller's representations and warranties

The Resellers represents and warrants that: (i) it will have permanent access to all online tools of MC3 and the Cloud Services Provider necessary for the performance of its obligations; (ii) it will use all necessary means to serve and support its End Customers; (iii) it will promptly inform MC3 of any difficulties encountered in providing the Service to its End Customers (iv) it will obtain the End Customer's acceptance of the Customer Contract binding it to the Cloud Services Provider before placing an order for that End Customer; and (v) it will promptly inform MC3 of any breach by the End Customer of the terms and conditions of the Customer Contract binding it to the Cloud Services Provider.

## 6.7. Negotiation of prices and payment terms

The Reseller is solely responsible for the prices it offers to End Customers, but it ensures that it offers competitive prices in order to promote the commercial distribution of the Service.

## 6.8. Service Subscription Guarantee

The Reseller's instructions to End Customers on the use of Service Subscriptions must comply with any written Cloud Service Provider warranty documentation, the Cloud Service Provider's Service Subscription terms, and the Cloud Service Provider's Customer Contract. The Reseller shall not make any representations, conditions, or warranties with respect to Service Subscriptions.

## 6.9. Licence excluded

The Reseller's rights to any of the Service Subscriptions do not include any licence, right, power or authority to cause any part of the Subscriptions to be subject to the terms of any excluded licence. An "excluded licence" is a licence, such as an open-source licence, which requires, as a condition of use, modification or distribution of the software subject to the excluded licence, that the software or any other software combined or distributed with it must be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of creating derivative works; or (iii) redistributable free of charge.

## 6.10. Acceptance of the Customer Contract

**6.10.1.** The Reseller must ensure that the contractual terms and conditions it applies to End Customers comply with the terms of this Agreement as well as those of the Customer Contract between the End Customer and the Cloud Services Provider. In particular, the Reseller must ensure that the licence and Subscription conditions for the Services and the restrictions on the use of the Services are communicated to and accepted by the End Customer. In case of breach of this obligation, the Reseller shall be solely liable to MC3 and/or the Cloud Services Provider.

**6.10.2.** If a Service is used beyond the limits of the licence (e.g. if it is revealed in an audit of the Reseller and/or the Reseller's End Customers that a single user account is shared by several users), the Reseller shall reimburse



MC3 for all related costs and expenses (internal and external). In addition, the Reseller must immediately purchase any missing licences to ensure that the use by the Reseller and/or the Reseller's End Customers is compliant.

**6.10.3.** By placing an order with MC3, the Reseller (i) represents and warrants that the End Customer has accepted the terms and conditions of the Customer Contract required by the relevant Cloud Services Provider, (ii) undertakes to pay to MC3 the amounts corresponding to the Orders placed by the End Customer which it submits for the Service Subscriptions. MC3 may accept or reject any proposed End Customer at MC3's discretion. If the End Customer does not accept the terms of the Cloud Services Provider's Customer Contract, the Reseller will be liable to MC3 and/or the Cloud Services Provider for all costs, overheads, damages of any kind suffered by MC3 and/or the Cloud Services Provider as a result of such failure.

### **6.11. Activation and retention of Customer Service**

The Reseller will make every effort to optimize the number of Service Subscriptions with the End Customers and to guarantee their satisfaction. The Reseller will regularly measure and/or monitor the results of its efforts in this way, taking into account in particular the subscription of new End Customers to the Services and the renewal of End Customers. In the event of non-achievement of the results thus monitored (acquisition, activation, customer satisfaction, etc.) the Parties may meet to share the reasons for the non-achievement of the results and to agree on the terms of the possible renewal of the Agreement, or its non-renewal.

### **6.12. Deactivation**

**6.12.1.** Unless otherwise stipulated in the Customer Contract including any related or additional terms or use rights referenced in the Customer Contract, the Reseller may suspend or deactivate the Service Subscription of an End Customer in accordance with the processes made available by the Vendor in the event of non-payment of any amount due to the Reseller in respect of the relevant Service Subscription or a serious and proven breach by the End Customer. The Reseller shall deactivate each active Service Subscription separately. Depending on the Service Subscription, the End Customer will have limited or no access to the Service Subscription. MC3 shall not be liable in any way to the End Customer as a result of the Reseller's deactivation of the End Customer's Service Subscriptions. MC3 accepts no responsibility for any suspension or deactivation action taken by the Reseller.

**6.12.2.** MC3 may deactivate a Reseller's End Customer Service Subscription or all of the Reseller's End Customer Service Subscriptions due to the Reseller's failure to comply with any of the criteria and conditions precedent set forth in this Agreement, the Reseller's breach of its payment obligations, for legal or regulatory reasons or for any other reason permitted by this Agreement. MC3 will inform the Reseller of a deactivation as soon as it is commercially reasonable. If MC3 deactivates an End Customer's Service Subscription, MC3 will also suspend billing to the Reseller for the relevant End Customer's Service Subscription until the Service Subscription is reactivated.

### **6.13. Service Level Agreement (SLA)**

Cloud Service Providers make certain service level commitments to End Customers in their corresponding SLA (which is part of the Customer Contract). The Reseller is responsible for communicating to the End Customer the current SLAs of the relevant Cloud Service Provider.



If an End Customer makes a claim under the SLA, the Reseller must submit the claim to MC3 for review. MC3 will forward the request to the Cloud Service Provider, who will then review it according to the Cloud Service Provider's standard SLA review process. Depending on the Cloud Service Provider's decision, MC3 will then apply any credits due on the Reseller's next billing reconciliation report. The Reseller must then credit the End Customer who submitted the SLA claim at least the amount that MC3 paid to the Reseller for the SLA credit. The End Customer is eligible for credits not exceeding the estimated total monthly retail price of the subscription ("ERP"). MC3 reserves the right to check for faults per Service Subscription or per service at any time. Nothing in this section shall prevent the Reseller from proactively granting credits to Customers who make an SLA claim prior to submitting a claim to MC3; however, the claim shall remain subject to validation by MC3 under the Cloud Services Provider's standard SLA review process and, if the claim is deemed invalid by the Cloud Services Provider or MC3, the Reseller shall be solely responsible for the credits advanced to End Customers.

#### 6.14. Customer Support

The Reseller undertakes to provide regular and ongoing support to the End Customer for Service Subscriptions and to be the main point of contact for its End Customers. The Reseller undertakes to communicate to the End Customer and clearly display its support policies, support hours, incident response time and service levels at the time of subscription to the Services and thereafter during the term of the Subscription.

#### 6.15. Technical support

##### 6.15.1. Support provided by the Reseller

The Reseller undertakes to provide assistance and support services to End Customers for all Service Subscriptions it resells and will include this undertaking in its contracts with its End Customers. The Reseller undertakes to provide assistance and support to the End Customer in respect of Service Subscriptions on an ongoing basis. The Reseller will be the preferred contact for its End Customers for the handling of all questions relating to operational and/or technical support in connection with Service Subscriptions. The Reseller is obliged to inform the End Customer of the procedures for implementing these support and assistance services.

The Reseller will provide MC3 with the telephone numbers, email addresses and web addresses of the Reseller's support staff. The Reseller will include support information in all websites or other materials that describe the Reseller's support for the Service Subscriptions. The Reseller may not publish, disclose or use the contact details of a Cloud Services Provider or MC3 in a manner that does not direct End Customers to either the Cloud Services Provider or MC3, unless they are officially communicated by the Cloud Services Provider or MC3 to the Reseller.

If an End Customer contacts MC3 or the Cloud Services Provider directly for support, MC3 and the Cloud Services Provider may, at their sole discretion, offer End Customer support or redirect the End Customer to the Reseller. Examples of support services include, but are not limited to, account set-up, registration, accounts and billing, how-to articles and FAQs, service and software upgrades, software configuration, performance issues within the scope of the Reseller's responsibilities, End Customer connectivity and support, and service availability issues within the scope of the Reseller's responsibilities.

Standard technical support requirements are at least telephone and email support during normal business hours. The minimum requirements for technical support in addition to this standard are set out in the special conditions of the Services.



MC3 may make certain online facilities available to the Reseller to be used for the Reseller's provision of technical support to End Customers. MC3 may adjust the content and functionality of these facilities at any time, at its sole discretion.

#### **6.15.2. Technical and security requirements**

The Parties undertake to comply with the best current industry standards regarding (i) the security of their respective organization and infrastructure and (ii) Data security. The special conditions of the Services may stipulate specific minimum requirements for such Services with respect to the Reseller or the End Customer (including minimum security requirements imposed on the Reseller and/or End Customer such as, but not limited to, protection against viruses and malware).

The Parties shall promptly inform each other if they become aware of any loss, damage, alternation, disclosure, destruction of, or any attempt to gain unauthorized access to, any data of the Reseller and/or the End Customers and shall work jointly and closely with the Vendor to minimize the impact of such an event and to prevent its recurrence.

#### **6.16. Technical support provided by MC3**

MC3 will provide technical support to the Reseller. MC3 will be the first point of contact for the Reseller's technical support requests.

Standard technical support consists of a telephone hotline and email support during normal business hours for the Services and the MC3 Cloud Platform. Technical support is only provided to the contact person designated by the Reseller within the Reseller.

The Reseller undertakes to follow all oral and/or written instructions of MC3 concerning the Services.

MC3 may charge additional fees for support other than that provided by MC3 in this article.

#### **6.17. Scaled-up Support Measures**

MC3 will provide Scaled-up Support Measures to the Reseller for undocumented scenarios and services impacting MC3 Cloud Platform events. "Scaled-up Support Measures" is defined as support that the Reseller cannot reasonably and technically provide to its End Customers because it does not have the necessary training, documentation and/or support tools on the MC3 Cloud Platform. If MC3 finds that the Reseller's problems are significantly worsening, then, at MC3's request, the Reseller will meet to discuss a remediation plan. If MC3 determines that a remediation is required, the Reseller will provide a report to MC3 on the Reseller's support capabilities and will provide any additional training required to the Reseller's personnel to support the remediation plan.



## 7. Prices and payments

### 7.1. Prices

The prices of the Service Subscriptions sold through the MC3 Cloud Platforms are indicated on the MC3 Cloud Platforms and are expressed, unless otherwise indicated, in the currency of the count to the. Subject to clause 7.4 below, prices for Service Subscriptions are subject to change without notice and any change in prices, whether due to increases in vendor pricing, exchange rate changes or otherwise, will be immediately applicable on the date indicated on the new price list.

All taxes, duties and fees originating in or outside the Mauritius territory shall be borne by the Reseller.

The prices will be made available to the Reseller after successful login and authentication on the MC3 Cloud Platform. MC3 may also make prices available through APIs or other tools for certain Service Subscriptions. MC3 may provide notice of price changes to the Reseller via the MC3 Cloud Platform or by email.

### 7.2. Payments

Payments must be made in the currency indicated on the invoice and are due on the date indicated on the invoice issued by MC3. If the Reseller does not receive an invoice within ten (10) days of its standard monthly billing date, the Reseller must promptly notify MC3 and MC3 will promptly send the Reseller a new invoice.

MC3 invoices the Reseller for the amount corresponding to the Service Subscriptions as soon as the End Customer's entitlement is opened and subject to any cancellation as referenced in article 6.1.1 in respect of which a pro-rata refund of the remaining duration of the term of the Service Subscription will apply, according to the frequency indicated in the Order, in arrears, and notwithstanding the price charged by the Reseller to the End Customer or its actual collection.

It is thus expressly agreed between the Parties that the payment of MC3's invoices is not conditional on the prior payment of the prices and fees invoiced to the End Customer by the Reseller

If the Reseller fails to make any payment by the due date of the invoice, MC3 may take one of the following actions:

- MC3 may withhold all outstanding orders, suspend further shipments or the End Customer's access to the Service Subscriptions under any agreement between MC3 and the Reseller until MC3 receives all payments due under this Agreement;
- MC3 may charge interest on the overdue amount from the first day the amount is overdue until it is paid in full. This includes any pre- or post-judgement amounts. Interest will be charged at the rates indicated on MC3's invoices. The Reseller will pay MC3 interest on demand.

During the term of the subscription, changes cannot be made and seat counts cannot be reduced.

If MC3 actions its right of suspension under clause 7.2, this does not alter the Reseller's obligation to pay all amounts due for the subscriptions and seat counts that have been order.

If MC3 chooses to take any of these actions, it does not waive any other rights or remedies it may have.

The Reseller may not withhold payment or make deductions from the amount of an invoice (by way of set-off, counterclaim or otherwise) before MC3 grants credit. This includes returns, rebates, price adjustments, billing errors, shipping claims, handling fees, allowances, rebate fees and other fees.

For credit sales, interest of 1% above bank rate per annum will be charged after due date.

### 7.3. Resale price

The Reseller is solely responsible for the prices it offers to End Customers but it ensures that it offers competitive prices in order to promote the commercial distribution of the Service.

For this purpose, MC3 may indicate a recommended resale price via its MC3 Cloud Platform.

### 7.4. Price adjustments

**7.4.1** Without limiting clause 7.4.2, price increases applicable to existing subscriptions and subscription renewals will be subject to the notice given by the vendor net of a period of (15) fifteen days (unless otherwise specified in the special terms of the Services), intended to allow the Resellers time to adjust their downstream agreements accordingly (if the Reseller has agreements in place with its customers that permit the Reseller to increase prices within this timeframe).

Price reductions can be decided at any time.

**7.4.2** Price adjustments for exchange rate changes applicable to the Reseller's existing subscriptions and subscription renewals purchased on the MC3 Cloud Platform may be made by MC3 on notice to the Reseller provided that MC3 reasonably determines that any such price adjustment corresponds with the relevant exchange rate change.

**7.4.3** Any price increase or price adjustment under this clause 7.4 will apply whether or not the Reseller is authorised, under its contracts with its customers, to increase the amount payable by the customer within the relevant timeframe or at all. Price reductions can be decided at any time.

**7.4.4** MC3 may provide notice to the Reseller of price increases and adjustments under this clause 7.4 via the MC3 Cloud Platform or by email.

### 7.5. Solvency

The Reseller will decide whether or not to grant credit to its End Customers. Non-payment by an End Customer, for whatever reason, to the Reseller shall in no way release the Reseller from its payment obligations to MC3, which the Reseller expressly acknowledges.

### 7.6. Withholding tax

All applicable value added taxes will be charged and payable in addition to the amounts due to MC3 under this Agreement. The Reseller will pay MC3 amounts equal to any applicable government taxes or duties however

designated that are paid or payable by MC3 in respect of the amounts due, exclusive however of taxes based on MC3's income. The Reseller will pay the amount specified in each invoice in full, without any set-off or deduction. The Reseller will not in any event deduct any amount for withholding taxes payable by the Reseller.

## 8. Reseller's obligations

### 8.1. In the context of the promotion of the Service

The Reseller undertakes to:

- Ensure sustained promotion of the Service and the services offered by MC3 to any prospect and its End Customers, in accordance with the directives and the level of communication indicated by MC3 and/or the Cloud Service Provider;
- In particular, to send a regular electronic message promoting the Service to all of its End Customers and prospects on a regular basis, to mention and promote the Service on its own website and in its printed documentation, etc. In this respect, the Reseller undertakes, in particular, to scrupulously respect the provisions of Law No. 2004-575 of 21 June 2004 "for confidence in the digital economy" and the "Data Protection Act" of 2002, as well as any future law amending this legislation.
- Use the promotional material (leaflets, explanations, user cases, etc.) transmitted by MC3 and/or the Cloud Services Provider and systematically recall the authorship of MC3 and/or the Cloud Services Provider on all promotional tools it may produce itself, which will be submitted to MC3 and/or the Cloud Services Provider prior to their distribution according to the terms of the Customer Contract.
- Provide prospects and End Customers with any useful advice and information concerning the Service, to ensure that the Service is suited to the End Customer's needs, to advise them on the optimum conditions for accessing the Service (in particular the web connection and hardware and network configuration requirements);
- Not to offer any functionality or options other than those presented in the promotional material submitted by MC3 and/or the Cloud Service Provider.
- Identify any specific needs of the End Customer that would require an adaptation of the Service within the framework of the Initialization and value the costs necessary for these adaptations as long as they fall within its scope of intervention.
- Send to MC3 any specific functional request from the End Customer so that MC3 and/or the Cloud Services Provider can analyse the feasibility and indicate the conditions and limits to be passed on to the End Customer in the negotiation between the Reseller and the End Customer.
- Check the solvency of the End Customer and the legal capacity of the End Customer's representative or their authority to sign the Customer Contract, and alert MC3 without delay in the event of a risk of insolvency or unlawfulness detected in the prospect.

## 8.2. As part of the marketing of the Service

The Reseller undertakes to:

- Negotiate with prospects, within the limits of the features and functionalities of the Service, the prices recommended by the Cloud Services Provider, and any Specific Developments that MC3 and/or the Cloud Services Provider has confirmed it can provide.
- Not to offer any guarantee or commitment concerning the Service, even implicit, other than those expressly included in the Customer Contract, and not to offer any Initialization service beyond its scope as defined below or functional adaptations validated by MC3 and/or the Cloud Services Provider.
- Prepare the order form listing (i) all the Service options and Initialization services ordered by the End Customer, (ii) any agreed Specific Developments, and send it to the End Customer.
- Have each End Customer sign the Customer Contract, as well as the corresponding order form.
- Send the corresponding Order to MC3 within forty-eight (48) hours of receipt of the End Customer's order form, ensuring this Order is fully compliant with the End Customer's order form, the Reseller being solely responsible for any discrepancies between the scope ordered by the End Customer and the scope referred to in the Order to MC3 and/or to the Cloud Services Provider, the latter being required only to respond to the Order it receives.
- Keep the Customer Contracts signed by the End Customers and the corresponding order forms, and to communicate a complete copy to MC3 within fifteen (15) working days following the signature of the End Customer
- Invoice the End Customer for the Initialization services according to the schedule agreed with them, (ii) for the Service Subscription according to the frequency agreed with them and (iii) ensure the prompt recovery of any late or unpaid amount.
- Inform MC3 immediately of any difficulty encountered in the marketing of the Service or of any complaint or request from an End Customer, ensure customer relations, monitor the Service and receive any additional request from the End Customer.
- And more generally perform all tasks and take all measures to ensure optimal marketing of the Service.

## 8.3. In the context of the Initialization of the Service

The Reseller undertakes to:

- Inform the End Customer of the functional or ergonomic adaptation services that MC3 and/or the Cloud Services Provider has confirmed it can implement, and the related prices and deadlines.
- Carry out the services in question and provide the corresponding Specific Developments (graphics or documentation);
- Carry out other Initialization services ordered by the End Customer, such as Service Settings, interconnection, and interfacing of the Service with the End Customer's information system, and/or load the End Customer's data or provide them with assistance for this purpose.
- Have the End Customer accept the Initialization services, immediately remove the reservations falling within its scope of intervention and escalate without delay the Anomalies falling within the functional or ergonomic adaptation services to MC3 and/or to the Cloud Services Provider.

- Have the Final Acceptance Report signed by the End Customer after the Anomalies have been resolved and transfer a copy without delay to MC3 and/or the Cloud Services Provider.
- Create the access codes for the End Customer on the dedicated platform provided by MC3 and send them to the administrator designated by the End Customer.

#### 8.4. In the context of the Maintenance of the Service

The Reseller undertakes to:

- Take charge of all Anomaly reports from the End Customer, as part of a reporting procedure in accordance with the stipulations of the Customer Contract;
- Remind the End Customer, if necessary, of the Maintenance requirements, procedures and exclusions contained in the Customer Contract and/or the contract between it and the Customer;
- Perform the Support services for the use of the Service with the End Customer's administrator or employees, and ensure the traceability of its Support interventions;
- Immediately escalate Anomaly reports that require the intervention of MC3 and/or Cloud Service Provider, i.e. (i) any functional Anomaly corrupting or hindering the performance of the Service's functionalities, and (ii) any technical Anomaly related to response times or the remote availability of the Service for the End Customer;
- Indicate to the End Customer, if applicable, the estimated timeframes for the provision of the corrections as indicated by MC3 and/or the Cloud Services Provider, excluding any firm commitment regarding the timeframes for restoring or correcting an Anomaly and excluding any penalty.

### 9. MC3's obligations

#### 9.1. In the context of the promotion and distribution of the Service

MC3 undertakes to:

- Provide the Reseller with promotional materials and guidelines for the Service;
- Respond promptly to any request for additional information from a prospect and relayed by the Reseller, subject to the Cloud Services Provider's business confidentiality, and respond to any request for a quote relating to the Customer's specific needs. The Parties specify that the Reseller determines at its own discretion the specific adaptations (i) that it proposes to include in the subsequent roadmap of the Service, (ii) that it proposes to support in the context of a specific estimate or (iii) that it declines because of the lack of feasibility or the cost involved;
- Promptly transmit to the Reseller the quotations relating to the Initialization services that are possible to meet the specific needs of a Customer, mentioning the related costs and the indicative deadlines to be passed on to the prospect/Customer;

## 9.2. As part of the marketing of the Service

MC3 undertakes to:

- Assist the Reseller in negotiating with the prospect, if necessary, and only refuse a prospect for a legitimate reason (e.g. the prospect is a competitor of MC3, or the services the prospect intends to offer on its marketplace are not legal or in line with the brand image of the Service, etc.);
- Accept any Service Order sent by the Reseller, corresponding to End Customers who have accepted the terms and conditions of the Customer Contracts and have placed an order form in accordance with them and within the limits stipulated in this Agreement;
- Forward to the Reseller any changes to the Customer Contracts so that it can implement them with prospects and Customers arising after their entry into force;
- Validate the order form prepared by the Reseller listing (i) all the Service options and Initialization services ordered by the End Customer and (ii) any agreed Specific Developments, and send it to the End Customer;
- Acknowledge in writing the receipt of the Orders sent by the Reseller and plan, in consultation with the Reseller, the Initialization services of MC3 and the delivery dates of any Specific Developments of MC3 and/or the Cloud Services Provider;
- Invoice the Reseller for the Initialization services performed under the Order.

## 9.3. In the context of the Initialization of the Service

MC3 undertakes to:

- Specify, carry out and deliver the Specific Developments (functional, software or ergonomic) for which it is responsible within the agreed deadlines, in accordance with the rules and the state of the art at the time of the Order;
- Immediately take charge of any Anomaly reported by the End Customer and escalated by the Reseller within the framework of the acceptance of the Specific Developments and the Service thus adapted.

## 9.4. In the context of the Maintenance of the Service

MC3 undertakes to:

- Ensure the hosting and storage of the Service (all back offices and front offices developed for the End Customer) and of the End Customers' Data on its own infrastructure or that of its hosting provider, by applying the possible service levels of said host, and within the framework of a best efforts commitment;
- Implement any server monitoring service in order to detect as far as possible availability or performance problems affecting the Service;
- Minimize the time slots for Evolutionary Maintenance of the Service or preventive maintenance of the hosting infrastructure, favoring the lowest intensity time slots for the resulting suspensions of Service;

- Remind the Reseller, if necessary, of the Maintenance requirements, procedures and exclusions contained in the Customer Contracts and/or this Agreement;
- Carry out 2nd level maintenance services for the Reseller and ensure the traceability of its maintenance interventions. MC3 does not provide any Maintenance services directly to the End Customer, who is not likely to send reports directly to it;
- If applicable, provide the Reseller with estimated timeframes for the provision of corrections or workarounds for the purposes of information to the End Customer by the Reseller;
- Regularly inform the Reseller of the functional roadmap of the Service and the main lines of its future development, particularly for the purpose of adapting the Reseller's promotional efforts. Similarly, MC3 undertakes to inform the Reseller without delay of any foreseeable event likely to have a negative impact on the conditions for opening End Customer accounts or performing the Service, so that the Reseller can adapt the marketing.

It is recalled that only MC3 and/or the Cloud Services Provider is entitled to access and intervene directly on the source codes composing the solution and the Service, as well as the Specific Developments. As such, MC3 and/or the Cloud Service Provider reserves the right to freely modify the Service, subject to preserving the functionality acquired by previous End Users.

MC3 and/or the Cloud Services Provider may make the provision of a Specific Development, a patch or a workaround conditional upon the End Customer signing an additional licence agreement (in particular if a workaround involves third party software), it being the responsibility of the Reseller to inform and obtain this signature from the End Customer.

The Reseller is solely responsible for any other action or service it provides to the End Customer, in particular in the context of Maintenance, and is liable to the End Customer and to MC3 for any damage it causes them in the performance of said services.

## **10. Hosting the Service**

The hosting of the Service is ensured by the hosting provider chosen by MC3, within the framework of a best efforts commitment. Consequently, the Reseller reminds the End User that they must only store and process Data and content via the Service that is strictly legal, and that they must refrain from processing or storing any Data that is contrary to the laws, regulations or public order, and in particular any content of a racist, xenophobic, sectarian, proselytizing, defamatory, insulting, obscene, pornographic or violent nature, as well as any infringement of the protection of privacy, the image of individuals or the rights of third parties (in particular by storing files obtained in violation of the rights of their authors).

The End Customer is solely responsible for the Data loaded, the processing, instructions and procedures that they activate, as well as the results obtained. In case of storage of Data contrary to this Agreement or use of the Service for purposes other than the use of the functionalities by the End Customer in the course of their business activity, MC3 reserves the right to (i) delete the disputed Data in case of emergency or threat to its infrastructure, (ii) interrupt the End Customer's access to the Service without delay or notice. In case of serious or repeated infringement, MC3 may ask the Reseller to terminate the End Customer's Service Subscription, such termination not giving rise to any compensation whatsoever, without prejudice to the damages that MC3 may claim from the End Customer for their actions.



## 11. Availability of the Service

MC3 endeavors to ensure that the Service is available 24 hours a day, 7 days a week, with an average availability rate of 99.9%, subject to preventive maintenance and Service upgrade periods. MC3 implements a redundancy system to minimize the consequences of any slowdowns or unavailability. However, the Reseller is warned of the technical hazards inherent in the Internet, the importance of the connectivity of the End Customers' websites, and the slowdowns or interruptions in access that may occur. Consequently, MC3 cannot guarantee the Reseller the permanent and optimal availability of the Service, which the reseller acknowledges and under-takes to bring to the attention of the End Customer. The Service is provided under a best efforts obligation.

## 12. Security of the Service

MC3 and/or its hosting provider implements security measures in accordance with the best standards in force, within the framework of a best-efforts obligation, against unauthorized access or Data breaches. It ensures the software and physical locking of the infrastructure. However, the Reseller is solely responsible for securing its own computer system and web access, and in particular for implementing firewalls, antivirus software or any other means of security to protect its system and ensure integrity of access to resources.

## 13. Invoicing

### 13.1. Service Subscription Offers and invoicing

#### 13.1.1. Time-limited-Service Subscription Offers

Time-limited-Service Subscriptions may be sold for a period of one (1) month or twelve (12) months or depending on what is made available by the vendor for the relevant Service type, except as otherwise provided in this Agreement. The Reseller may elect to be invoiced and pay for Time-Limited-Service Subscriptions on a monthly or annual basis (as applicable) as follows:

- In the case of monthly invoicing, new Service Subscriptions will expire one (1) full month or twelve (12) full calendar months after the Effective Date (as applicable, depending on and corresponding with the full term of the relevant Service Subscription). The Reseller will be invoiced in advance for the month on a pro-rata basis from the Effective Date based on the applicable monthly Service Subscription price.
- In the case of annual billing, new Service Subscriptions will expire twelve (12) full calendar months after the Effective Date (as applicable, depending on and corresponding with the full term of the relevant Service Subscription). The Reseller will be invoiced in advance and in full on the Effective of twelve (12) month Service Subscriptions.

Any subsequent adjustments to Service Subscriptions made in the middle of the billing cycle will be calculated and invoiced retrospectively in the subsequent billing.

Service Subscriptions automatically renew for the same period as the original subscription period, at the end of a subscription period unless (a) the Vendor permits scheduling of changes on renewal and the Reseller has scheduled changes to take effect on renewal in which case those changes, to the extent that they are changes permitted



by the relevant Vendor, will apply on renewal (b) the Reseller has notified MC3 in advance, providing the requisite notice, that the End Customer requires changes to the Service Subscription (and those changes are consistent with changes permitted by the relevant Vendor) or requires the Service Subscription to end on expiration of the current subscription period, the relevant Customer Contract says otherwise. The renewal fee will be based on the fee then in force at the time of renewal. In the event of non-renewal of its Service Subscription by the End Customer, the Reseller is obliged to terminate the Service Subscription of End Customer before the expiry date of the Service Subscription and subject to a notice period of one (1) month.

### **13.1.2. Prepaid subscription offers (also known as Pay-As-You-Go).**

The Prepaid Service Subscription offers are for one-month subscriptions which are invoiced on the basis of actual usage during the previous month without any prior commitment. Prepaid Service Subscriptions do not expire unless they are terminated by the End Customer concerned. Prepaid Service Subscriptions may be terminated at any time without notice, provided that any use of the Service prior to termination will be charged at the next scheduled billing date. Prepaid Service Subscription offers will be invoiced on the Reseller's next billing cycle and will include any usage of the Service in the previous month. Prices will be based on the prices in effect during the current billing cycle, unless prices change. MC3 retains the freedom to change its price list so that the unit price of a Prepaid Service Subscription may vary during the Service Subscription period.

### **13.1.3. Data center service consumption**

The Data center service consumption is provided by Microsoft and billed to the reseller.

The reseller and the end customer are responsible for securing its own computer system and web access, and in particular for implementing firewalls, MFA, Azure security defaults and antivirus software to protect its system. They undertake to pay for any fraudulent consumption that may occur in case of hack or non-authorized access to the end-customer's resources.

MC3 reserves the right to suspend an Azure subscription in case of suspected fraudulent use.

## **13.2. Invoice**

MC3 will make available to the Reseller the invoices issued to it via the MC3 Cloud Platform. The administrator designated by the Reseller and identified as such on the MC3 Cloud Platform will be able to access said invoices. Each invoice will identify the price payable by the Reseller in accordance with the price applicable to each Service Subscription. MC3's standard payment terms are Net Thirty (30) days.

The Reseller is obligated to make payments to the account specified on MC3's invoice or to any other account specified by MC3. Payments not received on time may give rise to penalties and financial charges equal to the amount of the invoice per month or the legal maximum, whichever is lower.

## **13.3. Invoice reconciliation and disputes**

MC3 provides invoice reconciliation information through the MC3 Cloud Platform. This information is made available to the administrator designated by the Reseller and identified as such on the MC3 Cloud Platform. The invoice reconciliation will contain information on Service Subscriptions, discounts and credits.

In case of a dispute between MC3 and the Reseller related to invoicing, an incident file will be opened by the Reseller via the MC3 Cloud Platform. The Reseller and MC3 will investigate and resolve in good faith any dispute concerning payments. After decision, a credit may be issued accordingly to be applied to the invoice for the following month.

## 14. Trademark licence

Throughout the duration of the Agreement, MC3 grants the Reseller the right to reproduce and use the Trademarks and logos of MC3 and/or the Cloud Services Provider necessary for the performance of this Agreement, solely for the promotion and marketing of the Service, on any commercial or advertising documentation relating to the distribution of the Service and as a commercial reference. MC3 guarantees the peaceful enjoyment of these Trademarks and logos to the Reseller during the term of the Agreement.

Likewise, during the term of the Agreement, the Reseller grants MC3 the right to reproduce and use the Reseller's service marks and logos, solely in the context of the presentation of its distributor co-contractors. The Reseller guarantees the peaceful enjoyment of these marks and logos to MC3 for the duration of the Agreement.

The Reseller shall endeavor to obtain the End Customer's permission for MC3 and the Reseller to use the End Customer's trademark and logo as a commercial reference. The Reseller confirms to MC3 in writing any authorization received by a Customer in this respect.

## 15. Distribution right

Throughout the duration of the Agreement, MC3 grants the Reseller a personal, non-exclusive, non-assignable and non-transferable right to use the Service for the purpose of demonstrating and marketing the Service to prospective customers and End Customers.

The right of exploitation is granted for the duration of the Agreement and in the Territory defined in the customer onboarding form, and includes the rights:

- To represent and display the Service for demonstration and testing purposes;
- To market and distribute the Service, by sub-licensing the use of the Service to End Customers under the Customer Contracts;
- To carry out on the Service all Specific Settings and Developments authorized by the Cloud Service Provider's solution and by this Agreement.

Under the terms of the Agreement, the Reseller does not acquire any right to use the Service for its own purposes and in its own name. The right of use granted under this Agreement is solely for the purpose of commercial distribution of the Service to the market.

Consequently, the Reseller is strictly prohibited, and prohibits any third party (employee, subcontractor, End Customer, prospect, etc.) from carrying out (i) any temporary or permanent reproduction of all or part of the Service, by any means whatsoever, (ii) any access or attempted access to the applications, environments and servers of MC3 and/or the Cloud Service Provider or its hosting provider, (iii) any decompilation or reverse engineering of the Service or its applications, in particular with a view to creating a similar service, (iv) any interfacing or

integration with other services or software without authorization from MC3 and/or the Cloud Service Provider, (v) any dissemination, distribution, free or paid provision of the Service for the benefit of another company, the public or third parties (except End Customers in accordance with Customer Contracts), (vi) any adaptation or modification of the Service beyond the authorized Settings, or (vii) any fraudulent or unauthorized entry or attempted entry on the hosting infrastructure of MC3 or its provider.

Similarly, the extraction or reuse of a qualitatively or quantitatively substantial part of the Service's own databases is prohibited. The same prohibitions apply to any Software Specific Development that is incorporated into the Service or provided to End Customers under the Agreement.

The Reseller undertakes to market the Service in accordance with its purpose, its Documentation, the professional rules applicable to its activities and the provisions of the Agreement. The right to use the Service is granted for the version of the Service available at the time the account is opened.

## 16. Intellectual property rights

### 16.1. Ownership

All Intellectual Property Rights and other rights attached to a Service are owned or licensed by the Vendor and all Intellectual Property Rights attached to the MC3 Cloud Platform are owned or licensed by MC3. The Agreement does not entail any transfer of property rights to the benefit of the Reseller and/or End Customers on the Service and/or the MC3 Cloud Platform, only the exploitation rights stipulated in the Article Distribution Right of the Service being granted to the Reseller for the duration and the Territory defined in this Agreement.

### 16.2. Trademarks and brand

Unless otherwise provided in the Customer Contracts, the Reseller shall redistribute the Services under the Vendor label and using the Vendor's trademarks with reference to the Vendor, in accordance with the provisions of the "Trademark Licence" section of this Agreement.

### 16.3. Violation of the Vendor's Intellectual Property Rights

The Reseller is obliged to inform MC3 immediately of any known or imminent infringement of any of the Intellectual Property Rights of the vendor, the CSP's third-party provider or MC3 of which it is aware.

The Cloud Service Provider or its third-party provider whose Intellectual Property Rights are affected shall have full control of all proceedings relating to the protection of their Intellectual Property Rights and shall decide, at their sole discretion, what action (including litigation, arbitration or settlement), if any, to take with respect to any actual or alleged infringement of their Intellectual Property Rights or any threatened or actual claim or counterclaim relating to the protection of their Intellectual Property Rights.

The Reseller shall ensure in its contractual relationship with the End Customer that the End Customer informs the Reseller accordingly if it becomes aware of an infringement of an intellectual property right and shall ensure that the Vendor can enforce its rights under Article 9 also against the End Customer.

## 17. Guarantee

MC3 guarantees that it has the authorizations and intellectual property rights to provide the Service to the Reseller for the purpose of marketing the Service. Accordingly, MC3 agrees to defend and hold the Reseller harmless against any damage related to claims, lawsuits or judgements, brought by a third party alleging that all or part of the Service infringes an intellectual property right, provided that the Reseller immediately notifies MC3 in writing of the existence of the lawsuit, makes a request for its defense, cooperates fully with MC3 in such defense and does not settle without MC3's prior written consent.

Insofar as MC3 recognizes that the component in question is infringing, it may, at its own choice and at its own expense: (i) modify the component in question so that the Service is no longer infringing, (ii) replace the component with a non-infringing component with equivalent or better overall performance, (iii) obtain the rights of use so that the End Customer can continue to use the Service in accordance with the terms of its Customer Contract. Failing this, MC3 may terminate the Agreement and will refund any Service fee paid in advance by the Reseller, as exclusive compensation. It is the responsibility of the Reseller to remind the End Customer of the conditions under which they benefit from this guarantee of peaceful enjoyment of the Service during the term of the Agreement.

However, this guarantee does not apply in the following cases:

- use of the Service by the End Customer that does not comply with its purpose or Documentation or the terms of the Customer Contract;
- configuration or setting of the Service by the Reseller not in accordance with the Service;
- hardware or software failure of one or more elements of the End User's website, computer system or network;
- failure of electronic communications networks, slowdown or congestion of the Internet or the End Customer's network;
- refusal of the End Customer to cooperate with the Reseller or, if applicable, MC3 in the resolution of Anomalies;
- incompatibility between the Service and new third-party hardware or software implemented by the End Customer or Reseller without prior validation by MC3;
- contamination of the End Customer's or Reseller's computer system by a computer virus;
- an act of hacking or fraudulent intrusion into the End Customer's computer system;
- intervention by a third party on the Service not authorized by MC3 or the Reseller;
- and more generally to any voluntary act of degradation, malice, sabotage by the End Customer or a third party, or deterioration due to force majeure.

In addition, neither the guarantee nor the Maintenance of MC3 is engaged in the event of an Anomaly due to:

- a Service Setup performed by the Reseller;
- a Specific Reseller Development;
- third party software or hardware acquired by the End Customer or provided by the Reseller;
- and more generally to the Initialization services performed by the Reseller.

For its part, the Reseller provides MC3 with the same guarantee on all Specific Developments and deliverables that it may be required to produce and supply to the End Customer within the framework of its contract, as well as on the Settings and more generally on all the services that it provides directly to the End Customer.

Finally, the Reseller reminds End Users that they alone are responsible for the lawfulness, relevance, safety and quality of their Data.

## 18. Protection of personal data

Within the meaning of the applicable regulations and in particular the European Data Protection Regulation No. 2016-679, the Reseller is the "data controller" and the Reseller is its "processor". In this context and taking into account the SaaS mode of operation of the Service (= Software in SaaS mode), the Reseller is likely to upload, process and host personal data via the Service provided by MC3, resulting in its hosting on the infrastructures of MC3 or its designated subcontractor.

Before providing Personal Data to the Distributor, the Reseller will obtain all required consents from third parties (including Customers, partners, contractors and employees) under applicable Data Protection Laws.

The Reseller acknowledges that Processing of Personal Data by the Third Party Vendor is subject to the Vendor Agreement.

The Reseller must ensure that it includes appropriate provisions relating to data protection and the GDPR in its contracts with Customers.

It is up to the Reseller to determine the categories of personal data collected from End Customers. Unless otherwise stipulated in the Customer Contracts, the categories of personal data collected are as follows: (i) [name, surname, and email address of the SaaS End Users on behalf of the Reseller]. It is recommended that reference be made to a detailed appendix to deal with these points, particularly in the case of customization of the SaaS to the specific needs of the End Customer.

Personal data is processed and hosted by MC3 for the above-mentioned purposes and on the sole instructions of the Reseller, within the sole framework of the Agreement. It is kept by MC3 for the duration of the Agreement, at the end of which it is deleted after being returned to the Reseller as part of the reversibility of the Service.

With respect to the security and confidentiality of personal data, MC3 undertakes to (i) keep personal data strictly confidential, (ii) implement within its Service, including its hosting infrastructure, the appropriate organisational and technical measures to protect personal data, and (iii) establish, maintain and provide upon first request a description of the measures implemented within the SaaS to protect personal data (it being recalled that the End User is solely responsible for the security, access modalities and protection of personal data on its own Information System).

MC3 Cloud undertakes (i) not to subcontract any part of its Services and (ii) not to transfer personal data outside the territory of Mauritius without the express prior written consent of the Reseller, who has signed an undertaking to comply with the requirements of the applicable regulations.

Where necessary, the Reseller undertakes to (i) assist and cooperate with the Customer in the event of an impact analysis or request from the supervisory authority, (ii) implement and maintain a procedure for reporting security breaches or unauthorized access to personal data leading to the prompt alert of the Customer, (iii) to modify or delete at the request of the Customer or a data subject any personal data in the event of the exercise by the latter of the rights granted to him/her by the aforementioned regulation, and (iv) to cooperate with the personal data

protection authority in coordination with the Customer. The Customer is hereby informed that the Reseller uses the services of a subcontractor to host the Service and expressly authorizes it to do so.

In any case, it is recalled that the Service provided by the Reseller is a contributory but not sufficient element to the compliance of the End Customer with all regulatory requirements in terms of data protection, and that the responsibility of MC3 and/or the Reseller in terms of compliance with the Regulations is strictly limited to the scope of the Service operated by it. The End Customer must have, without this list being exhaustive, an information system adapted to the processing of personal data, a risk and impact analysis, if applicable, a security policy for their information system, a charter for the use of IT resources, a training and awareness program for their users in terms of security and data protection, under their sole responsibility. Under no circumstances can the Reseller and/or MC3 be held liable for the End Customer's failure to comply with the organisational and technical measures for the protection of personal data incumbent upon them, nor more generally in the determination by them of the categories of data collected and/or loaded by them within the Service, the purposes pursued and the processing carried out by them or at their request.

## 19. Confidentiality

During the term of the Agreement, either Party may disclose Confidential Information to the other Party in order to fulfil its obligations under this Agreement.

However, Confidential Information does not include information that is or becomes publicly available without breach by the Reseller of this Agreement, including, without limitation, information:

- which was in the possession of the receiving party before it was communicated to it by the disclosing party;
- for which it is implied in this Agreement that it will be transmitted to a third party or which is communicated due to mandatory legislation or a court order;
- which has been communicated to the receiving party by a third party who is not under an obligation of confidentiality or non-use towards the disclosing party;
- or which has been independently developed by the receiving party without the receiving party having used any Confidential Information of the disclosing party or the Cloud Service Provider.

Information obtained under this Agreement shall not, under any circumstances, be used for any purpose other than those set out in this Agreement.

The Parties, their officers, directors and employees shall protect Confidential Information, documents and all related information, whether written or oral, concerning their own trade secrets. The Parties agree to require their officers, directors and employees who have access to Confidential Information to exercise a sufficient degree of care to protect the Confidential Information from any type of unauthorized disclosure or use.

In the event that the receiving party fails to comply with this article, the receiving party will indemnify and hold harmless the disclosing party and Cloud Service Providers from and against all costs, losses and expenses (including reasonable lawyers' fees) arising out of or in connection with the breach of the confidentiality undertaking in this article.

The obligations under this article shall remain in force five years after the end of this Agreement, regardless of the cause, except and to the extent that such information is or subsequently falls into the public domain.



## 20. Compliance with laws and anti-corruption policies of Cloud Service Providers

The Reseller shall comply with all applicable laws against corruption, inaccurate books and records, inadequate internal controls and money laundering, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010. The Reseller certifies that it has reviewed and will comply with any anti-corruption policies required by Cloud Service Providers.

The Reseller acknowledges in particular that an anti-corruption Code of Conduct, defining and illustrating the different types of behavior to be prohibited as being likely to characterize acts of corruption or influence peddling, forms an integral part of the internal regulations of the Reseller or its Affiliates. The Reseller has also put in place a disciplinary system allowing it to sanction its employees in the event of a breach of the aforementioned Code of Conduct.

The Reseller has adopted an internal whistleblowing procedure, allowing any employee and any third party to report conduct or situations contrary to the Code of Conduct of a certain seriousness. The Reseller has also developed a risk map in the form of regularly updated documentation to identify, analyse and prioritise the company's risks of exposure to external solicitations for the purposes of corruption, according in particular to the sectors of activity and geographical areas in which the company carries out its activity.

The Reseller has procedures in place to assess the situation of customers, first-tier suppliers and intermediaries with regard to risk mapping, as well as internal and external accounting control procedures to ensure that books, records and accounts are not used to conceal corruption or influence peddling.

The Reseller undertakes to raise awareness and provide annual training on Anti-Corruption Laws to those managers and staff most exposed to the risks of corruption and influence peddling who resell, distribute or market Service Subscriptions. The Reseller certifies that anti-corruption training has been provided to its employees. Otherwise, the Reseller agrees to participate annually, on a date to be communicated sufficiently in advance, in online anti-corruption training offered free of charge by MC3 upon request and certifies that it has followed, understood and complied with the Cloud Service Providers' anti-corruption policies. The Reseller's record-keeping obligations as described in Article 14 - Audit Rights below apply to the Reseller's certifications under this Article and to its compliance with the Anti-Corruption Laws.

The Reseller has put in place an internal system to control and evaluate the measures implemented as described above.

The Reseller acknowledges that it is prohibited from paying travel, accommodation, gifts, lodging or charitable contributions to government officials on behalf of MC3 or any Cloud Service Provider. The Reseller also acknowledges that it is prohibited to use funds provided by MC3, or any proceeds from any MC3 activity, to pay for travel, accommodation, gifts, lodging expenses or charitable contributions to government officials.

## 21. Government restrictions

### 21.1. Export restrictions

Subscriptions, software, services and technology may be subject to US or EU export jurisdiction. All parties must comply fully with all national and international export control regulations and economic and financial sanctions, including US export administration regulations, international arms trafficking regulations and end-use and destination restrictions imposed by the US and other governments on end users.

The Reseller shall ensure that neither the receipt, delivery, use or resale of the Services results in a breach of export control regulations or sanctions or prohibitions imposed by the United Nations, the United States, the European Union or any national governmental authority concerned with the execution of the commercial transaction.

This includes without limitation any restrictions on the Services, the place of use, the intended end use, any intermediate recipient, End Customers or Service Subscriptions or any other person (including organizations) involved or having an interest in the transaction or the Services.

In the event of a change in the use or final destination of the Services, the Reseller undertakes to notify MC3 of the new destination.

The Reseller irrevocably agrees to indemnify MC3 for all losses, damages, claims, fines and costs, including reasonable legal and lawyers' fees, which may arise or result from the breach of this article.

### 21.2. Administrative approvals

The Reseller (and its Affiliates) shall obtain such administrative approvals (and demonstrate such other compliance) as may be necessary for the Reseller to provide Service Subscriptions or otherwise perform its obligations under this Agreement. This is the responsibility of the Reseller. The Reseller may only import and provide Service Subscriptions into or to a country or territory if it is permitted to do so by and in compliance with all applicable laws and regulations of the country or territory and this Agreement.

### 21.3. Discounts, rights and other concessions

The Reseller will disclose all rebates, fees and other concessions to an Administrations Customer in accordance with the law, regulations or the terms of administrative requests.

## 22. MC3 Audit Rights

Twice (2) a year, MC3 may audit the Reseller's premises, accounting records and information system in order to check its full compliance with its commitments under this Agreement, in particular the reporting and payments sent by End Customers.

If necessary, MC3 may ask the Reseller to communicate any certificate from its auditor attesting to the sales made. If the audit reveals inconsistencies with the Reseller's contractual commitments or with its periodic



reporting, the Reseller undertakes to comply with its commitments without delay and in particular to make any additional reporting / payment of fees. If necessary, the audit is invoiced to the Reseller, who pays for it.

## 23. Liability

Subject to any provision of this Agreement or any action by the other party which limits a party's responsibility for its obligations and actions, each party assumes full responsibility for its obligations and actions. However, and by express agreement:

- MC3's liability is limited to an amount equivalent to the amount paid by the reseller for the month before the harmful event occurred, provided that the damage is directly and exclusively linked to a breach of duty by MC3 proven by the Reseller.
- MC3 shall not be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the misuse of the Services.

The Services are provided "as is" so that MC3 warrants the compliance of the Service with its Documentation, the terms of the Agreement and the terms of the Customer Contract between the Cloud Services Provider and the End User, to the exclusion of any warranty of merchantability or fitness for a particular purpose.

Therefore, MC3 and/or the Cloud Service Provider are not responsible for the Products meeting the desired expectations and needs.

It is recalled that the Reseller is responsible for its Initialization services (i) to the End Customer and (ii) to the Cloud Services Provider, insofar as the proper performance of these Initialization services conditions the continuation of the Customer Contract and its subscription to the Service, as well as more generally the brand image of MC3 and the Cloud Services Provider.

The Reseller undertakes to take out any insurance necessary for the performance of this Contract and in particular to take out civil liability insurance covering all material and non-material damage. Upon request, the Reseller undertakes to provide MC3 with an insurance certificate as soon as possible.

## 24. Damage caused by Resellers or End Customers

If MC3 and/or the Cloud Services Provider suffer damage caused by (i) a fault attributable to an End Customer, and/or (ii) a breach attributable to the End Customer of one or more of its obligations under the Customer Contract (where the Vendor and/or MC3 cannot recover damages from the End Customer due to the absence of a contractual relationship with the latter), the Reseller shall not be held liable by MC3 or the Vendor for the events mentioned in (i) and (ii) above unless such behavior of the End Customer is due to negligence of the Reseller, its legal representatives or employees.

Furthermore, the Reseller is liable to MC3 and/or the Cloud Service Provider if the fault or breach of its obligations under this Agreement is attributable to the Reseller.

## 25. Force majeure

Neither of the parties to this Agreement shall be liable in the event of delay, poor performance or non-performance of its obligations resulting from an event that may be considered as force majeure.

A Party claiming to be affected by an event of force majeure shall notify the other Party in writing without delay of the occurrence of a force majeure event. For the duration of the force majeure, the affected Party shall not be bound to perform its obligations. The other Party is also not obliged to perform its own obligations during the same period, and is not obliged to pay any service fee. However, force majeure does not nullify the obligation to perform once conditions return to normal. For the duration of the force majeure thus established, both Parties are obliged to make every effort to overcome the obstacles linked to the force majeure.

The Party invoking force majeure shall immediately inform the other Party once the force majeure has ended.

## 26. Transfer

The Contract is granted by MC3 *intuitu personae*, i.e. because of the person of the Reseller, its prospecting network and its guarantees of professionalism. Consequently, the Reseller is not entitled to benefit of the Agreement without the prior written authorization of MC3.

The Reseller may, after having informed MC3, assign or transfer all or part of the Agreement in the event of a merger, demerger, takeover or changes affecting its capital and/or to any company in its group and/or to any company controlled by it.

## 27. Changes affecting the Reseller and Notifications

Notwithstanding any other notification obligations under this Agreement, each Party shall immediately inform the other of any changes affecting the structure of its organization, including:

- significant changes in control of the capital ;
- changes of corporate name (whether corporate name or trade name);
- mergers/reorganizations/divestments;
- changes in location; or changes in the organization's operational activities.

Changes to the name or registered office of a Party must be signed by an authorized signatory of the Party concerned and must be supported by: (i) an extract from the commercial register or equivalent institution in the country; and (ii) an up-to-date tax certificate showing the tax and VAT registration numbers after the change.

Prior notifications should be sent by email to the usual contact person.

## **28. Warranty and indemnity obligations**

### **28.1. Warranty**

Cloud Service Providers guarantee their End Customer Service Subscriptions as described in the relevant Customer Contract.

### **28.2. Warranty exclusions**

Except as required by applicable law, MC3 makes no other express warranty or representation. To the fullest extent permissible pursuant to applicable law, MC3 disclaims all implied warranties and conditions, such as the implied warranties of merchantability, non-infringement and fitness for a particular purpose.

## **29. Applicable law / Attribution of jurisdiction**

MC3 Cloud Ltd elects' domicile at its registered office.

All the clauses contained in these GTCS and all the purchase and sale transactions referred to herein are subject to Mauritian law.

Before any legal action, the parties shall, in good faith, seek to settle amicably their disputes. In case of failure, the resolution of any dispute or difference shall be subject to the exclusive jurisdiction of the courts located within the territorial jurisdiction where the defendant is established, unless otherwise provided by applicable law. Therefore, any legal action brought against MC3 Cloud shall be brought before the competent courts of the place of its registered office.

If the Buyer is summoned by third parties before another jurisdiction, he hereby waives the right to call the Seller in warranty before any other jurisdiction.

## **30. Miscellaneous provisions**

### **30.1. Entire agreement**

The Agreement, including the customer onboarding form, constitutes the entire agreement between the Parties relating to its subject matter, and supersedes all previous documents exchanged between them in relation to the project referred to in the preamble. In the event that this Agreement is translated into a foreign language, only the Agreement and the customer onboarding form shall be authentic.

### 30.2. Independence

It is understood that both Parties hereto are independent contractors and are engaged in the performance of their own respective activities. No Party hereto shall be deemed to be the agent of the other Party for any purpose and no Party shall be authorized to enter into any contract or assume any obligation for the other Party (except the right to license and subscribe in accordance with this Agreement) or to give any warranty or make any representation on behalf of the other Party. Each Party shall be fully responsible for its own employees and agents, and the employees and agents of one Party shall in no event be deemed to be employees and agents of the other Party.

### 30.3. Non-waiver of rights

The fact that one of the Parties does not invoke a commitment by the other Party to any of the obligations under this Agreement may not be interpreted, for the future, as a waiver of the obligation in question.

In the event that any of the provisions hereof are held to be invalid, inapplicable or unenforceable by any competent court, the remaining provisions hereof shall remain valid, applicable and enforceable unless otherwise provided by such court. The Parties nevertheless agree that in such a case, they will negotiate in good faith replacement provisions that will be (i) valid, applicable and enforceable and (ii) consistent with the Parties' original intention.

### 30.4. Customer satisfaction surveys

For the purpose of optimizing Service Subscriptions, the Cloud Services Provider may allow End Customers or the Reseller to participate in customer satisfaction surveys, including without limitation: 1) by using the online customer satisfaction survey tools provided by the Cloud Services Provider, or 2) by sharing the customer satisfaction results collected by the Reseller and presented in a format mutually acceptable to the Cloud Services Provider and the Reseller.

### 30.5. Feedback

Either Party may provide suggestions, comments or any other observations to the other Party regarding the Subscriptions to e-Services. Even if the observation is classified as confidential, the party receiving it may use it for any purpose without obligation of any kind. The party receiving the observation will not disclose the source of the observation without the consent of the party providing it. Unless the parties expressly agree otherwise in writing, the observation does not create any obligation of confidentiality.

## Additional terms and conditions – White Label Agreement

**These special terms and conditions complement the general terms and conditions of sale of the Cloud above.**

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## **1 Error! Bookmark not defined.Scope of Agreement**

### **1.1 MC3:**

- (a) will undertake the Setup Activities;
- (b) will supply the White-Labelled Marketplace to the Reseller, which includes:
  - availability of Products for the Service Provider to resell to End-Customers;
  - operational and billing processes for provisioning of Products direct to End-Customers and for the Reseller to charge End-Customers for the Products they have ordered; and
- (c) grants to the Reseller the right to resell the Products on the Marketplace;

in accordance with this Agreement and subject to the Reseller complying with its obligations, including without limitation payment obligations.

## **2 Term**

- 2.1** The Reseller accepts the terms and conditions that apply at the time of placing an Order on the Marketplace.
- 2.2** This Agreement remains effective for until expiration of the initial term or until terminated by either party under clause 14.

## **3 Setup Activities**

- 3.1** During the Setup Period, MC3 will undertake the Setup Activities;
- 3.2** The Reseller acknowledges that certain Setup Activities require MC3 to engage the services of the Platform Provider. The Reseller consents to MC3 engaging the Platform Provider for this purpose and to the Platform Provider having access to the work-in-progress Service Provider Marketplace and all related applications or environments in use by the Services for this purpose to the extent that access has been granted by the Service Provider to MC3.
- 3.3** MC3 will notify the Reseller in writing when it is satisfied that the Setup Activities have been completed.
- 3.4** If the Setup Activities have not been completed within two weeks following MC3's notification, the parties will meet to resolve the issues.

## 4 Right to use White-label Marketplace

- 4.1 MC3 grants to the Reseller a non-exclusive right to use the White-label marketplace in order to operate the Marketplace in the Territory, in accordance with this Agreement.
- 4.2 The Reseller acknowledges that the right granted under clause 4.1 is dependent on many factors including without limitation:
- (a) MC3's rights to use the Platform;
  - (b) the functionality and features of the Platform.

## 5 Marketing and sales

- 5.1 In its operation of the Marketplace and in marketing and selling the Products, the Reseller:
- (a) will use the marketing materials provided by MC3;
  - (b) will ensure that any use of the logos or trademarks of third-party vendors is expressly permitted by the third party vendor;
- 5.2 As between the Reseller and MC3, the Reseller is solely responsible for promotion of and sales on the Marketplace and the Reseller acknowledges that:
- (a) MC3 has no involvement in the marketing or selling efforts of the Reseller; and
  - (b) provides no assurance as to the volume of sales that may be achieved by the Reseller on the Marketplace.
- 5.3 The MC3 will provide access to the Platform to enable the Reseller to view and obtain reports on sales and other activities in relation to the Marketplace, as established during the Setup Activities and subsequently agreed between the parties (subject to any limitations of the Platform).
- 5.4 The Reseller acknowledges that it is not permitted to use the MC3's logo or any CMP Supplier trademarks, unless expressly authorised by MC3.
- 5.5 All Products are made available to the End-Customer that has placed the order, according to the processes of the relevant third party vendor agreed between the third party vendors and MC3 in relation to the Marketplace.
- 5.6 MC3 will use its reasonable endeavours to ensure that the Marketplace operates as intended to enable Customers to place orders for the Products and to receive the Products they order provided that the MC3 does not provide any guarantee on continuous or uninterrupted availability of the Marketplace.



## **6 Contracts with End-Customers**

- 6.1** The Reseller acknowledges that on placing an order for Products on the Marketplace:
- (a) each End-Customer will be required to accept the Reseller's terms and conditions and that on that acceptance, a contract between the Reseller and the End-Customer is created; and
  - (b) the Customer is required to accept the Third Party Vendor Agreement, which is an agreement between the third party vendor of the Product and the Customer.

## **7 Support Services and Professional Services**

- 7.1** All Support Services and Professional Services are provided to the Reseller and in no case are these services provided directly to or for the End-Customer or any third party.
- 7.2** The Reseller acknowledges that certain Support Services and/or Professional Services may require MC3 to engage the services of the Platform Provider. The Reseller consents to MC3 engaging the Platform Provider for this purpose and to the Platform Provider having access to the Marketplace for this purpose.

## **8 Charges and payment**

- 8.1** The Reseller acknowledges that End-Customers will pay the Reseller directly for Products ordered by the End-Customer on the Marketplace. Collection of payment from End-Customers is the Reseller's responsibility and the Reseller will be required to pay MC3 whether or not payment has been made by the End-Customer to the Reseller;
- 8.2** The Reseller will have to pay monthly fees to use the Marketplace.
- 8.3** In addition to the amounts due to MC3 under this Agreement, the Reseller will pay MC3 amounts equal to any applicable government taxes or duties however designated, based on this Agreement, paid or payable by the MC3 in respect of the payments, exclusive however of taxes based on MC3's income.
- 8.4** Without limiting any other remedies available to MC3 for late payment or failure to pay any amount due, if any amount due is not paid by the Reseller by the due date, the MC3 may:
- (a) charge the Reseller interest calculated at 1.5% on the balance of the amount due by the Reseller from the due date until payment is received in full by MC3; and/or
  - (b) charge the Reseller all collection costs reasonably incurred by MC3 in collection of the amount outstanding (including solicitor and/or collection agency fees).

## 9 Protection of Intellectual Property

9.1 The Reseller acknowledges that:

- (a) all Intellectual Property in the Platform is owned by the Platform Provider or its licensors;
- (b) all Intellectual Property in the Products is owned by the relevant third party vendor or its licensors.

9.2 Except as provided under clause 9.1(a) or (b), all Intellectual Property in the Marketplace is owned by the MC3 or its licensors.

9.3 Without limiting clauses 9.1 or 9.2, nothing in this Agreement operates to transfer to MC3 any Intellectual Property owned by the Reseller in the branding or marketing materials or customer database or other items used by the Reseller on or in relation to the Marketplace.

9.4 Nothing in this Agreement operates to alter the Intellectual Property ownership described in clauses 9.1, 9.2 and 9.3.

9.5 The Reseller must not, nor may it permit any other person to:

- (a) copy or in any way reproduce the Marketplace;
- (b) alter or modify the Marketplace, except as expressly agreed in this Agreement or otherwise in writing between the parties;
- (c) alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality, proprietary or trade secret legend or notice, or any numbers, or other means of identification used on or in relation to the Marketplace or the Platform;
- (d) do any act which would or might invalidate or be inconsistent with the Intellectual Property rights of MC3, the Platform Provider or any third party vendor of the Products.

## 10 Personnel

10.1 The personnel assigned by MC3 to provide services under this Agreement will have the requisite skills and expertise for the purpose and will carry out their duties with due care and skill.

## 11 Personal Data and Data Protection

11.1 Before providing Personal Data to MC3, the Reseller will obtain all required consents from third parties (including Customers, partners, contractors and employees) under applicable Data Protection Laws.

11.2 Where the GDPR applies, the GDPR & Data Protection Schedule attached to these terms and conditions applies. Where the GDPR does not apply, the GDPR & Data Protection Schedule may not be attached or if it is attached in any event does not apply.

**11.3** The Reseller consents to the Processing of Personal Data by MC3 for the purposes of this Agreement, in accordance with this Agreement including in particular the GDPR & Data Protection Schedule (when applicable).

**11.4** In the event of any Personal Data Breach, MC3 will comply with its obligations, including notification obligations, (if any), under applicable Data Protection Laws.

## **12 Confidential Information**

**12.1** Each party agrees to:

- (a) hold in confidence all Confidential Information disclosed to it by the other party including, but without limitation, information which:
  - i. comes into its possession as a result of, or in the performance of this Agreement; or
  - ii. is confidential and clearly so identified; or
  - iii. involves business plans or financial and personnel affairs, and
- (b) ensure that all Confidential Information is:
  - i. used only for the purposes of this Agreement; and
  - ii. protected at all times from unauthorised access or use by, or disclosure to, any third party or misuse, damage or destruction by any person.

## **13 No warranty by MC3**

**13.1** To the extent permitted by law, all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise are excluded from this Agreement.

## **14 Termination**

**14.1** Either party may terminate this Agreement immediately (or with effect from any later date that it may nominate) by written notice to the other party if one or more Insolvency Events occurs in relation to that other party. For the purposes of this clause, 'Insolvency Event' means, in respect of a party (other than for the purpose of solvent reconstruction or amalgamation): the party is unable to pay its debts when due or is deemed unable to pay its debts under any law, or suspends payment to its creditors.

**14.2** Without limiting any other rights of termination that a party may have, either party may terminate this Agreement on written notice to the other party if the other party:

- (a) commits a material breach of any of its obligations under this Agreement; and
- (b) fails to remedy that breach within 30 days of prior written notice of such breach.

- 14.3** In addition to its other rights of termination, MC3 may terminate this Agreement on written notice to the Reseller if:
- (a) the MC3's agreement with the Platform Provider terminates for any reason; or
  - (b) the MC3's agreement with Microsoft terminates for any reason.

## **15 Consequences of termination**

- 15.1** On termination of this Agreement by either party:
- (a) the Marketplace will close on an agreed date or if no date is agreed prior to the termination date, will close on the termination date;
  - (b) the existing Customer's subscriptions to Products will continue until their natural expiration or termination (provided that the Customer remains able to transfer to an alternate reseller) and the parties will agree on a communication to be issued by MC3 to existing Customers; and
  - (c) MC3 will issue invoices to the Reseller for all amounts for which no invoice has yet been issued and all invoices will be due on the 20<sup>th</sup> of the month following the date of invoice. Invoices issued prior to the date of termination will remain due in accordance with the terms of the invoice.

## **16 Liability and indemnity**

- 16.1** MC3's liability under this Agreement is limited to direct loss only, to the amount paid by the Reseller to MC3 in the one-month period preceding the event giving rise to the claim.
- 16.2** In no event is MC3 liable for any indirect loss or for any loss of profits, lost savings, lost revenue, loss of data, business interruption, incidental or special damages, or for any consequential loss. In addition, the MC3 is not liable for any damages claimed by the Reseller based on any third party claim, including, but not limited to, any claim by a third party vendor or a End-Customer or any claim in negligence. In no event is MC3 liable for any damages caused (whether directly or indirectly) by the Reseller's failure to perform its responsibilities under this Agreement.
- 16.3** In no event is MC3 liable to the Reseller for or in connection with the Products, including without limitation in terms of performance, non-performance, availability, non-availability, compliance or non-compliance with specifications of the Products or otherwise. The Reseller acknowledges that any right or remedy that a Customer may have in relation to a Product is included or referenced in the relevant Third Party Agreement.
- 16.4** The Reseller indemnifies MC3 against any costs (including legal costs on a solicitor and own client basis, all and any court costs and witness fees and related legal expenses), expenses, claims, demands or liability whether direct, indirect or otherwise, and whether arising in contract, tort (including negligence), equity or otherwise, arising out of, and must at MC3's request, and subject to clause 16.5 and any reasonable conditions imposed at the MC3's discretion, at the Reseller's own cost defend or settle, any claim, action or proceedings brought against MC3 in connection with:

- (a) use of a Product otherwise than in accordance with the relevant Third Party Agreement; or
- (b) use of the Marketplace otherwise than as permitted or otherwise than as reasonably intended by MC3 or the Platform Provider;
- (c) a breach by MC3 of this Agreement.

**16.5** If MC3 wishes to rely on an indemnity under clause 16.4, MC3:

- (a) must ensure that the Reseller is notified promptly in writing of the relevant claim, action or proceedings ("Claim") once it becomes aware of the Claim;
- (b) will make no admission of liability regarding the Claim nor any offers of settlement regarding the Claim without the Reseller's written approval;
- (c) may, at its discretion, grant control of the defence or settlement to the Reseller;
- (d) will, where MC3 has granted control of the defence or settlement negotiations to the Reseller:
  - i. co-operate reasonably with the Reseller in defending or settling the Claim and make its employees available to give statements, advice and evidence, as the Reseller may reasonably request, all at the expense of the Reseller; and
  - ii. give the Reseller sufficient authority and relevant information in its possession or control in order to assist the Reseller to conduct the defence of the Claim and all negotiations for its settlement or compromise.

## **17** **Dispute Resolution**

**17.1** In the event of any dispute arising between the parties in relation to this Agreement, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 17.

**17.2** The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.

**17.3** If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period as may be agreed upon in writing by the parties), either party may utilise any other legal remedies available to it in seeking to resolve the dispute.

## 18 Non-Solicitation

- 18.1 Neither party will, without the written consent of the other party, solicit, employ, or otherwise engage the services of, the other party's personnel (including employees and contractors). This clause will apply during the term of this Agreement and for six months after termination of the Agreement.

## 19 Force majeure

- 19.1 Either party may suspend its obligations to perform under this Agreement if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.
- 19.2 Where a party's obligations have been suspended pursuant to clause 20.1 for a period of 30 days or more, the other party may immediately terminate this Agreement by giving notice in writing to the other party.

## 20 General

- 20.1 **Assignment.** The Reseller is not permitted to assign its rights under this Agreement without the prior written consent of MC3, which may be withheld in the absolute discretion of MC3 or granted on such terms as the MC3 thinks fit.
- 20.2 **Contractors.** MC3 may perform its obligations under this Agreement by the use of the MC3-selected independent contractors.
- 20.3 **Other agreements.** Subject to the confidentiality obligations in this Agreement, nothing in this Agreement prevents MC3 from entering into similar agreements with others or from providing white-labelled marketplaces which are the same or similar to the White-label Marketplace provided under this Agreement.
- 20.4 **Survival.** All clauses of this Agreement, which by their nature survive the termination of this Agreement will do so.
- 20.5 **Entire agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.
- 20.6 **Further assurances.** The parties must each do all such further acts (and sign any documents), as may be necessary or desirable for effecting the transactions contemplated by this Agreement.
- 20.7 **Amendments.** Except as specifically provided, no amendment to this Agreement will be effective unless it is in writing and signed by both parties.
- 20.8 **Waiver.** No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it. A waiver on one occasion shall not be construed as a waiver of any right on any future occasion.

20.9 Partial invalidity. If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law. To the extent any provision cannot be enforced in accordance with the stated intentions of the parties, such terms and conditions shall be deemed not to be a part of this Agreement.

## 21 Governing Law

21.1 This Agreement is governed by the laws of Mauritius. The parties hereby submit to the non-exclusive jurisdiction of the courts of the Republic of Mauritius.

## 22 Interpretation and definitions

22.1 In this Agreement, the following terms will, unless the context requires otherwise, have the following meanings:

“**Agreement**” means this White-label Marketplace Agreement including the Schedule, these terms and conditions and the GDPR & Data Protection Schedule;

“**CMP Supplier’s Marketplace**” means the cloud marketplace established and operated by MC3;

“**Confidential Information**” means any information disclosed in confidence to one party by the other party, whether of a business, financial, technical or non-technical nature or otherwise and whether existing in hard copy form, electronically or otherwise but does not include any information which is:

on receipt by the recipient party, in the public domain or which subsequently enters the public domain without any breach of this Agreement;

on receipt by the recipient party, already known by that party (otherwise than as a result of disclosure by the other party);

at any time after the date of receipt by the recipient party, received in good faith by the recipient party from a third party;

required by law to be disclosed by the recipient party;

“**Customer**” means a Permitted Purchaser that places an order for Products on the Marketplace;

“**Data Protection Laws**” means any and all laws relating to Personal Data (including data security, protection, privacy or the processing of Personal Data), including the GDPR, and includes any statutory modification or re-enactment of such laws for the time being in force;

“**Force Majeure Event**” means any war, riot, third party strike, pandemic, civil emergency, natural disaster or other circumstance of a similar nature that is outside of the control of the affected party;

“**GDPR**” means EU General Data Protection Regulation 2016/679;





**“Intellectual Property”** means copyright, patents, designs, trademarks, trade names, goodwill rights, rights in designs, moral rights, database rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property, in all cases whether or not registered or able to be registered in any country, and including the right to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world from time to time;

**“Marketplace Readiness”** means the Marketplace is ready to be made available to the reseller’s End-customers;

**“Marketplace Readiness Date”** means the date that Marketplace Readiness is achieved;

**“Personal Data”** means any information relating to an identified or identifiable natural person, as defined in the Data Protection Laws;

**“Personal Data Breach”** has the meaning given to that term in the Data Protection Laws (and includes unauthorised access to, unauthorised disclosure of, or loss of, Personal Data), in respect of Personal Data that is Processed by MC3 under this Agreement);

**“Platform”** means cloud service provisioning and business automation solution supplied by the Platform Provider;

**“Platform Provider”** means Interworks a third party provider;

**“Processing”** has the meaning given to that term in the Data Protection Laws, in respect of any operation which is performed on Personal Data by MC3 (whether or not by automated means, and includes but is not limited to collection, recording or storage of the Personal Data), in respect of and ‘Process’ and ‘Processed’ has/have a corresponding meaning;

**“Products”** means the cloud services supplied by third party vendors, as listed or referenced in Appendix 2 and which may be updated in accordance with this Agreement or by agreement in writing between the parties;

**“Professional Services”** means services to be provided by MC3 to the Reseller, as specified in a proposal or statement of work which is agreed as may be varied under a change request that is agreed in writing between the parties, and excludes the Setup Activities and the Support Services;

**“Schedule”** means the schedule that begins after the execution provisions of this Agreement;

**“Marketplace”** means the MC3’s marketplace on Marketplace Readiness Date, established using the White-Labelled Marketplace and following completion of the Setup Activities, and which may be updated in accordance with this Agreement or by agreement in writing between the parties;

**“Setup Period”** means the estimated time period for completion of the Setup Activities, being a period of 24 hours from Commencement Date;

**“Third Party Vendor Agreement”** means the agreement or terms and conditions provided by a third party vendor, applicable to use of the relevant Product, as updated from time to time by the third party vendor;

**“White-labelled Marketplace”** means a non-branded version of the MC3’s Marketplace, operating on the Platform and made available by MC3, prior to the Setup Activities;